

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL WARZEK,

Plaintiff,

v.

VALLEY STATE PRISON, et al.,

Defendants.

No. 1:20-cv-00027 KES GSA (PC)

ORDER DIRECTING PLAINTIFF TO SHOW
CAUSE WHY THIS MATTER SHOULD NOT
BE DISMISSED

PLAINTIFF'S SHOWING OF CAUSE, OR
ALTERNATIVELY, A RESPONSE TO
DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT DUE **MAY 8, 2024**

Plaintiff, a state prisoner proceeding pro se and in forma pauperis, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

This matter is at the dispositive motion phase of the proceedings. For the reasons stated below, Plaintiff will be ordered to show cause why this matter should not be dismissed for failure to prosecute. As an alternative to filing a showing of cause, Plaintiff will be given the opportunity to file a response to Defendants' motion for summary judgment.

I. BACKGROUND

On March 6, 2024, Defendants filed a motion for summary judgment. ECF No. 65. To date, Plaintiff has not responded to Defendants' motion, nor has he filed a request for an extension of time to do so.

II. DISCUSSION

Pursuant to the Local Rules in prisoner actions litigants have twenty-one days after a motion has been filed to file a response. Local Rule 230(l). Thereafter, within seven days of the filing of a responsive pleading, the moving party may file a reply. Id. Should the responding party fail to file a response, motions that have been filed are to be deemed submitted when the time to file a reply has expired. Id.

In this case, Plaintiff's response to Defendants' motion for summary judgment was due March 27, 2024, and Defendants' reply, if any, was due April 3, 2024. As a result, the Court may either: (1) deem this matter submitted and issue a ruling based solely on Defendants' motion for summary judgment, or (2) dismiss this matter outright due to Plaintiff's failure to prosecute. See Local Rules 230(l), 110, respectively. Prior to doing either, however, the Court will direct Plaintiff to show cause why this matter should not be dismissed. In the alternative, Plaintiff may file a response to Defendants' motion for summary judgment. Plaintiff will be given thirty days to do one or the other.

Accordingly, IT IS HEREBY ORDERED that:

1. Within thirty days from the date of this order, Plaintiff shall SHOW CAUSE why this matter should not be dismissed for failure to prosecute. See Local Rule 110; or,

2. As an alternative to filing a showing of cause, Plaintiff may file a response to Defendants' motion for summary judgment, and

3. Plaintiff's showing of cause or his response to Defendants' motion for summary judgment shall be filed no later than **May 8, 2024**.

IT IS SO ORDERED.

Dated: **April 8, 2024**

/s/ Gary S. Austin

UNITED STATES MAGISTRATE JUDGE